

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 26 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MANUEL ANTONIO DIAZ-NAVARRO,

Defendant - Appellant.

No. 08-50153

D.C. No. 3:07-cr-02733-BTM-1

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Barry T. Moskowitz, District Judge, Presiding

Submitted February 18, 2009^{**}

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Manuel Antonio Diaz-Navarro appeals from the 66-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

States, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm, but remand to correct the judgment.

Diaz-Navarro contends that the district court erred during sentencing by failing to consider all of the 18 U.S.C. § 3553(a) sentencing factors. We conclude that there was no procedural error. *See United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc).

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand the case to the district court with instructions that it delete from the judgment the incorrect reference to 8 U.S.C. § 1326(b). *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b)(2)).

AFFIRMED; REMANDED to correct the judgment.